January 1998 "Fast Track" petition, because the FCC in the NPRM does not propose the basic retail/wholesale corporate structure that the LCI petition proposed. 62/ While Qwest continues to fully support the LCI petition, we attempt to respond to the Commission's desire to allow the ILEC to create an unregulated affiliate for the provision of advanced services. 63/

A. No Ownership of Local Network Facilities, Equipment, or Capabilities.

As discussed above, the separate affiliate should not be allowed to own any local network facilities, equipment, or capabilities. These must remain with the ILEC and remain fully subject to the market-opening provisions of Section 251(c). Under this structure, the affiliate would be permitted to provide retail

---

62/ The LCI Petition is discussed in more detail above

63/ We emphasize that the Commission is engaged in applying statutory definitions here, not in crafting safeguards as a matter of competitive policy or the public interest. Under the statute, an ILEC affiliate must not function as an ILEC or with the ILEC if it is to be considered not an ILEC. Thus, for example, the Commission would lack the authority to sunset the separate affiliate requirement, because the separate affiliate requirement is essential to retention of non-ILEC status. See NPRM at para. 99. Similarly, the Commission cannot apply different separation requirements to smaller ILECs for purposes of declaring their affiliates to be non-ILECs under Section 251(h). See NPRM at para. 98.

The Commission also should not, in this proceeding, confuse exercise of forbearance authority to relieve an ILEC of its statutory obligations with the application of separate affiliate requirements -- which are a matter of the definition of an ILEC under Section 251(h). The Commission retains the authority, of course, to forbear when consistent with Section 10, once Sections 251 and 271 are fully implemented. At some point in the future, if multiple ubiquitous broadband networks have been deployed and are open to competitors, the basis for forbearance might exist.

advanced services, on an unregulated basis, by purchasing network elements from the ILEC on the same rates, terms and conditions as its competitors. This structure would at least put the affiliate in the same shoes as the CLECs, who depend upon access to the ubiquitous ILEC network in order to compete. That network would remain available to CLECs if the ILEC, and not the affiliate, owns that capability. Under the Commission's proposal, ILEC investment in advanced services equipment and facilities would be available only to the ILEC. The ILEC affiliate thus would *not* stand in the shoes of an unaffiliated CLEC under the Commission's proposal. If the affiliate were to elect to own the advanced network element capability, then that capability and the services provided over it would be subject to Section 251(c), because the ILEC would have assigned its advanced services capability to its affiliate, and the affiliate would have become the ILEC for advanced services, pursuant to Section 251(h) 64/

B. No Joint Marketing

As discussed above, the Section 272 affiliate would be permitted under the FCC's rules to engage in extensive joint marketing activity, which confers on the affiliate an "unfair advantage" and ensures that the affiliate will not be "truly

64/ See discussion in preceding section; see also Non-Accounting Safeguards Order at para. 309. The Advanced Services affiliate could lawfully be allowed to own and operate local network elements on an exclusive basis only (1) if the ILEC chooses to divest the subsidiary, or (2) at that point in the future when forbearance from Section 251 is justified for the traditional ILEC exchange company.

separate" from the ILEC. 65/ The Commission should prohibit the ILEC and the affiliate from engaging in any joint marketing, sale, advertising, or offering of services. For example, the ILECs should not be allowed to include services provided by the affiliate in the same service package (and vice versa), nor could they bundle-price the offerings (i.e., offer a lower price on the ILEC's service if a customer purchases services from the affiliate). They also should not be allowed to create service offerings together, advertise their services together, or transfer customers to the other company for sale of the other company's services. They must not use each other's customer proprietary network information (CPNI) for any purpose.

Joint marketing activity would be strong evidence that the affiliate and the ILEC are one and the same. Certainly the affiliate would have advantages that are completely unavailable to unaffiliated CLECs. Such joint offerings and joint activity also would make it very difficult to detect or prevent discriminatory treatment in favor of the affiliate. Congress must have recognized this, because under Section 272(g), Congress stated that the BOC's joint marketing and sale of services with its affiliate is not subject to the nondiscrimination provisions of Section 272(c).

65/ See 47 U.S.C. § 272(g)(3) (permitting the joint marketing and sale of services with the affiliate and excluding such activity from the Section 272(c) nondiscrimination requirements). See also Non-Accounting Safeguards Order at paras. 291, 296. The issues that arise in connection with the marketing or sale by an ILEC of its own affiliate's services are not present when the ILEC markets or sells the services of an unaffiliated carrier. Joint marketing and other joint activities simply are not problematic when the companies are unaffiliated.

C. No Resale of ILEC's Local Exchange Service By Affiliate

The economics of service resale for an ILEC affiliate are entirely different than they would be for an unaffiliated CLEC. The affiliate does not care what the nominal resale price is, because the affiliate is paying that price to a sister company. The affiliate can offer local service at a low retail rate (even below the ILEC retail rate -- a fact that could be hidden by bundled pricing). The resale price simply does not affect the price that the affiliate can charge to end users, and it can be artificially inflated without affecting the overall profitability of the enterprise, as discussed above.

In addition, if the affiliate can resell the local exchange service of the ILEC, it will never have an incentive to provide local exchange service via UNEs. Because the resale price paid by the affiliate is an artificial one, the affiliate has no need to cut costs by purchasing UNEs and providing local exchange and exchange access service itself. It does not care if the ILEC keeps all the access revenues, because it is "all in the family." If the affiliate never has an incentive to purchase UNEs, then UNE combination and OSS problems, among others, will never have to be worked out. 66/

66/ The Non-Accounting Safeguards Order makes it clear that if the Section 272 affiliate orders unbundled network elements from the ILEC, it must use the same OSS that competitors must use. See id. at para. 316.

D. Partial Public Ownership

The resale issue just discussed is but one example of a larger problem: that all prices paid by the affiliate to the ILEC (or to the parent) are artificial and do not affect the profitability of the enterprise as a whole. As discussed above, the ILEC's inflated prices do not present a problem to the affiliate and do not require the affiliate to reflect those prices in its own retail prices. The potential for predatory pricing, inflation of input costs from the ILEC, and cost-shifting also is enormous.

The solution is to require the affiliate to have partial public ownership. If the affiliate is partially publicly owned, there is a stronger argument that it is not the same company as the ILEC and therefore is not the "successor or assign" of the ILEC. Even partial public ownership will create fiduciary obligations and incentives in the affiliate that would be similar to those of an unaffiliated CLEC. Public ownership would require the affiliate to force the ILEC to provide network inputs at reasonable prices, and would require the affiliate to price its retail offerings to reflect its cost inputs (that is, to attempt to be profitable as a stand-alone operation). Permitting cost-shifting from the ILEC would violate the affiliate's fiduciary obligations as well. The disclosure and independent financial reporting requirements that would be imposed on the affiliate also would make it easier to detect self-dealing, cost-shifting, inflated input prices from the ILEC, and predatory pricing. Management of the affiliate could (and should) be compensated only through the affiliate's stock, not the parent's. That incentive would be a powerful one. 67/

E. Prohibition on Joint Ownership of Equipment, Buildings, and Administrative Services

The joint ownership of equipment (including such equipment as repair trucks, computer systems), buildings, and administrative services provide ample opportunity for cost-shifting and joint activity. For example, if personnel from both the ILEC and the affiliate share the same office space, they can more easily share information, think of themselves as the same company, and perform services for each other without accounting for that. If the companies are to be "truly separate" within the meaning of Section 251(h), this joint ownership should not be permitted.

F. No Sharing of Corporate and Brand Names

If the ILEC and the affiliate are allowed to use the same or a similar corporate and brand name, then consumers will perceive that they are the same company. Under that circumstance, the affiliate must be treated as an ILEC -- it is not fully separate from the ILEC, and it obtains an "unfair advantage" from the ILEC. The affiliate and the ILEC must use separate names such that, at a minimum, customers can easily distinguish between the two companies as separate corporate and operating entities.

67/ As discussed above, the Non-Accounting Safeguards Order permits the affiliate's management to be compensated with BOC or RBOC stock. See id. at para. 177, 186.

G. Pick and Choose

As interpreted by the Eighth Circuit, an interconnection agreement between an ILEC and a CLEC is available to other CLECs, but other CLECs must take the entire agreement or nothing in the agreement is available to it. 68/ The separate affiliate would be permitted under the Commission's proposal, to take services from the ILEC pursuant to tariff or interconnection agreement (or by publicly available contracts, in the case of services outside the Section 251(c) rubric).

If the ILEC and its affiliate are permitted to negotiate an interconnection agreement to cover interconnection, UNEs, collocation, and other matters, the interconnection agreement must be subject to a "pick and choose" rule. If it is not, the agreement could be written in such a way as to be nominally available to all CLECs, but as a practical matter usable only by the ILEC affiliate, which could have characteristics that no CLEC could match. To address this problem, the Commission should require that the agreements be available to any CLEC on a section-by-section basis, with the key terms available regardless of surrounding material. The Commission should also look carefully at non-cost-based volume discounts, which could be used to favor the affiliate. Tariffs also must be

---

68/ See Iowa Utilities Board v. FCC, 120 F.3d 753, 800-801 (8th Cir. 1997), cert. granted (interpreting 47 U.S.C. § 252(i)).

susceptible to a pick and choose approach and be scrutinized for volume discounts. 69/

H. Approval of Compliance Plan

Before authorizing the affiliate to operate on an unregulated basis, the Commission must require the affiliate to file a compliance plan, which the Commission must put out for public comment and affirmatively approve. This essential measure, which the Commission also has employed in other restructuring contexts, is essential to ensure that the affiliate is structured in a way that will ensure its independence from the ILEC and thus its non-ILEC status under Section 251(h).

The above modifications to the Commission's separate affiliate proposal are well within its authority to determine when an affiliate is sufficiently separate from the ILEC that it can be considered to be a non-ILEC. These measures preserve the essential approach the Commission proposes here, but they eliminate many of the legal and competitive problems with the Commission's approach.

69/ Obviously, much of this scrutiny would take place at the state level, but the Commission could establish rules that govern the design of the tariffs and interconnection agreements, pursuant to Section 251(h).

VII. ILECS SHOULD NOT BE PERMITTED TO TRANSFER FACILITIES, EQUIPMENT, OR OTHER TELECOMMUNICATIONS CAPABILITY TO THE SEPARATE AFFILIATE.

The Commission seeks comment on whether to allow an ILEC to transfer its xDSL investment to the separate affiliate and treat that investment as non-ILEC investment under Section 251(h). As discussed above, whether network investment is transferred to the affiliate or made directly by the affiliate, that investment should be subject to Section 251(c) because in either case the ILEC affiliate is an ILEC within the meaning of Section 251(h).

Qwest submits that this principle is central to the Act and not subject to debate. It goes without saying, then that any network investment transferred to the affiliate must continue to be subject to Section 251(c). The Non-Accounting Safeguards Order already has made it clear that when an ILEC transfers facilities or equipment to the Section 272 affiliate, the affiliate is an ILEC within the meaning of Section 251(h), and that Section 251(c) therefore applies to those transferred facilities. 70/

This view is the only one that gives effect to the language, purpose and intent of both Section 251(h) and Section 251(c). The FCC implicitly recognized this when it proposed to require that any *loops* transferred to the affiliate must be made subject to Section 251(c). 71/ There is no statutory basis for treating loops

70/ Non-Accounting Safeguards Order at para. 309.

71/ See NPRM at para. 107 (tentatively concluding that any transfer of loops to the affiliate would make the affiliate an assign of the ILEC within the meaning of Section 251(h)).

differently from any other facilities necessary to provide competing local service (including advanced services), and the Commission offered none. The potential for discrimination in favor of the ILEC affiliate through discriminatory transfer of facilities is enormous. For example, if the ILEC were allowed to transfer dark fiber to its affiliate, it might well transfer the newer recent generation fiber to the affiliate, leaving the older fiber with the ILEC The result would be that the loop and transport facilities and functionality available to competitors would always be inferior to those the affiliate can employ. It would be difficult, however, to identify such discriminatory facilities transfers.

As discussed above, to compete in the provision of last mile advanced services, Qwest and others need to be able to employ not just ILEC unbundled loops, but also any other local exchange network capabilities that the ILEC (or its affiliate) uses to provide advanced services. Contrary to the Commission's implicit assumptions, the economics of providing competitive xDSL and other advanced services solely using ILEC unbundled loops (without electronics) simply do not provide the basis for broad-scale entry and competition in the provision of advanced services. The Commission cannot and should not permit the ILECs to evade their Section 251(c) obligations in this way.

There also is no statutory or policy basis for a "*de minimis*" exception to the rule that transferred facilities are subject to Section 251(c). 72/ If an ILEC

72/ NPRM at para. 108.

affiliate is an ILEC under Section 251(h) when it acquires facilities from the ILEC, by virtue of the definition of ILEC in Section 251(h), then there is no possible basis for creating an exception to that definition. The Commission's proposal, moreover, is far from *de minimis*. The Commission appears to propose to permit the transfer of any xDSL investment (but not loops) without imposing Section 251(c) obligations on that investment. 73/ But the statute, does not distinguish advanced services (as the FCC recognized in the Advanced Services Order), any special protection for loops, or anything other types of network facilities or capabilities.

Drawing any such lines would untenable as a practical matter, anyway, because for any particular loop, some equipment might be newly installed and some old. This discussion also highlights the absurdity of the distinction between equipment owned by the ILEC and equipment owned by the ILEC affiliate. All of the equipment will be located on, integrated with, or connected directly to the ILEC's own network. It will be very difficult as a practical matter to distinguish which is which.

VIII. THE COMMISSION SHOULD ADOPT MEASURES TO PROMOTE INTERCONNECTION AND COLLOCATION BY COMPETITORS PROVIDING LOCAL ADVANCED SERVICES

Widespread geographic deployment of advanced services will require additional measures by the Commission to require ILECs to allow cost effective

73/ NPRM at para. 108.

collocation of any equipment a competitor chooses to use to efficiently provide those services and to maintain and provide to competitors local loops that allow cost effective provisioning of those services.

A. National Standards

The Commission should establish federal rules for collocation and the provisioning of local loops for advanced services. Qwest supports the Commission's tentative conclusions[74] that these rules should set forth national minimum standards. State commissions should have the ability to establish further requirements, to the extent that they are not inconsistent with the national minimum standards, in the context of State arbitration proceedings or rulemakings. As the Commission noted, several States have already used the flexibility provided by the Commission's earlier use of a minimum standards approach to address specific issues, further facilitating the local competition goals of the 1996 Act.[75]

National rules will help speed deployment of advanced services and lower costs to consumers by: 1) providing certainty for ILEC investment in network maintenance and upgrades; 2) allowing competitors providing service in more than one State to offer their products and services to consumers more rapidly; 3) providing greater predictability for equipment manufacturers, thereby allowing increased economies of scale for both ILECs and competitors; and 4) reducing

---

74 NPRM at para. 124 and 155.

75 Id.

transaction costs and delays by eliminating extensive negotiation and litigation over collocation rights and local loop requirements. National rules are particularly important because they will provide greater certainty for planning deployment of advanced services by both ILECs and competitors, as well as providing greater predictability which is critical for access to capital and the development and manufacture of advanced services equipment.

B. Collocation of Equipment

A significant impediment to the cost effective deployment of advanced services by competitors is the Commission's present prohibition on the collocation of switching equipment.76 The ILEC is under no such prohibition itself, and therefore derives a tremendous competitive advantage from its ability to efficiently connect its switching equipment with the network infrastructure that is needed to reach the consumer. Further, Section 251(c) and the amended definition of "telephone exchange service" provided by the 1996 Act make it clear that competing carriers should be allowed to collocate equipment that includes switching capabilities.

As the Commission notes, the interconnection obligations of an ILEC under Section 251(c)(6) include the obligation to allow collocation of equipment used for "interconnection for 'the transmission and *routing* of telephone exchange service and exchange access' pursuant to Section 251(c)(2)." (emphasis added).77 In the

---

76 Local Competition Order, 11 FCC Rcd at 15795 at para. 581; 47 C.F.R. § 51.323(c).

77 NPRM at para. 126, quoting 47 U.S.C. § 251(c)(2).

1996 Act Congress amended the definition of "telephone exchange service" to include "... service provided through a system of *switches*, transmission facilities, or other facilities (or combination thereof) by which a subscriber can originate or terminate a telecommunications service." (emphasis added).78 It seems clear from the plain language of the statute that "telephone exchange service" may be provided by means of switching equipment, and that competing carriers may interconnect equipment that provides the ability to route telephone exchange service or exchange access.

Given the ever decreasing size of modern switching equipment and the unfair competitive advantage ILECs have by being able to collocate their own switching equipment. the Commission should revisit its previous determinations in light of the plain statutory language and clearly establish by rule that competing carriers may physically collocate on ILEC premises equipment with switching capabilities. There should be no requirement that switching equipment must also be combined with other equipment, since switches are specifically identified in the statute and provide the ability to route the customer's information to its termination point. The Commission's rule permitting collocation of switching equipment could include reasonable limitations on the size of such equipment, for example to no larger than the 100 square foot cages that many RBOCs advocate as

78 47 U.S.C. § 153(47)(B).

the *minimum* size area that a competing carrier must rent for collocation, in order to reduce space exhaustion problems.

Qwest also supports the Commission's tentative conclusion that ILECs should not be able to "impose unnecessary restrictions on the type of equipment that competing carriers may collocate."79 This should include unnecessary restrictions on equipment that provides interconnection or access to unbundled network elements that also provides enhanced services capabilities (for example storage and forwarding of customer information). Allowing competitors to use integrated equipment that performs multiple functions will promote efficient network design, reduce costs to consumers, and place the competing carrier in the same position as the ILEC (who is under no constraints on the use of equipment that performs multiple functions). Vendors will only design integrated equipment if there is demand for such equipment, and there will be demand for such equipment only if the integrated approach is more cost efficient than using separate elements.

The Commission's concerns80 that competing carriers will use integrated equipment as a means to circumvent a ban on placing certain equipment on the premises of an ILEC are unfounded. Nothing prevents the ILEC from integrating enhanced services capabilities in equipment it uses to originate and terminate telecommunications services – why should competing carriers be

---

79 NPRM at para. 129.

80 Id. at paras. 129, 130, 132.

prohibited from doing the same? To do so only impedes competition, delays the deployment of advanced services, and frustrates the competitive neutrality goals of the 1996 Act. Further, a prohibition on integrated equipment may seriously undermine competing carriers' ability to provide the type of advanced telecommunications services needed to support advanced information services, especially as the interaction between the transmission and enhancement functions becomes increasingly intertwined.

Finally, Qwest urges the Commission to address the issue of safety standards for collocated equipment in its rules. ILECs should not be able to require that collocated equipment meet anything more than NEBS requirements for fire, electrical, signal interference, and earthquake safety. The ILEC should not be permitted to require equipment collocated by competing carriers for interconnection or access to unbundled network elements to meet NEBS requirements for performance or quality of service standards, unless the ILEC can demonstrate that the installation of the equipment in question will actually result in a degradation of service to customers using the ILEC's network. Further, to the extent that an ILEC uses equipment that does not meet NEBS standards, competing carriers should be permitted to use the same or similar equipment without meeting those standards.

C. Allocation of Space

Qwest strongly supports the Commission's tentative conclusion[81] that ILECs should be required to offer alternative collocation arrangements that

---

81 NPRM at para. 137.

minimize the space needed by each provider. As a general rule, the ILEC should not be able to require a competing carrier to purchase or rent more space in the ILEC facility than the carrier requests. All of the alternatives suggested by the Commission are technically feasible, and the Commission should include in the rule a presumption that any arrangement offered by one ILEC is technically feasible for use at any other ILEC facility. The same presumption should be applied with respect to security arrangements.

Reduction of costs for space and security requirements is critical to the deployment of advanced services. As LCI noted in its June 1998 White Paper on "CLEC Access to xDSL Technology,"

> [e]ven if the non-recurring cost of physical collocation were reduced by many factors to a more reasonable level (such as the $10,000 for cageless collocation proposed by Covad) 82/ and the minimum space requirement were only 7.5 square feet (for example, as agreed to by BellSouth in the Tennessee Section 271 proceedings), 83/ 48 central offices in the Dallas-Fort Worth area (almost half of the total) would not qualify as profitable, assuming that the CLEC could absorb a cost differential vis-à-vis the ILEC of $5 per line per month.84

82/ Comments of Covad on RBOC Petitions (CC Docket Nos. 98-11 et al.) at 15.

83/ Here we prorate the assumed $1500 monthly recurring charge, based on the smaller cage size ($15 per square foot).

84 "CLEC Access to xDSL Technology: A Necessary Predicate for Widespread, Competitive Deployment of Broadband Telecommunications Services," LCI International Telecom. Corp. White Paper, June 1998, at 25-26 (footnotes in original), filed in CC Docket Nos. 98-11 et al. ("LCI xDSL White Paper"). A copy of the White Paper also will be filed in the record of this docket as well. See also discussion in Section II.A., above.

LCI also noted in the same White Paper that non-recurring and monthly collocation charges alone could make the provision of xDSL services by competing carriers cost prohibitive, due to the fact that the ILEC does not have to pay similar charges. In the example cited, the *per line* cost of providing xDSL services could be increased above ILEC costs by anywhere from $5.50 per month to $1440 per month![85]

Qwest supports the ALTS proposal that the Commission should establish a presumption that any necessary preparation of collocation space by the ILEC should be able to be completed with a specified time. Competing carriers need to be able to inform customers when service may begin, and unreasonable delays in preparing collocation space is an easy way for an ILEC to frustrate a competing carrier's efforts to penetrate the local market. In the event that an ILEC fails to prepare space within the time agreed to, the ILEC should be required to pay damages to the competing carrier.

D. Space Exhaustion

Qwest supports the Commission's tentative conclusions with respect to inspection for space exhaustion and the issuance of reports on available collocation space.[86] The reports should identify areas that the ILEC is reserving for future use, and should provide a timetable for when the ILEC intends to use any reserved space. The Commission should require ILECs to remove obsolete equipment if

---

85 Id. at 24.

86 Advanced Services NPRM at paras. 146 and 147.

necessary to permit competing carriers to physically collocate. If space in a particular ILEC facility is exhausted and a competing carrier is seeking physical collocation, any reservations of space should be limited to areas necessary to accommodate equipment or building modifications (for personnel or administration) that the ILEC has already contracted for purchase or construction.

Qwest also supports the other collocation aspects of the ALTS document, such as "cageless" collocation, subleasing of physical collocation space, cage to cage connectivity, more economical collocation pricing, and speedier determination of space availability.

IX. THE COMMISSION SHOULD DEFINE ACCESS TO NETWORK ELEMENTS TO ENCOMPASS THE FULL CAPABILITIES OF THE ILEC NETWORK.

A. National Rules

Qwest supports the adoption of national rules that make clear that competing carriers continue to have the right to employ, under the network element provisions of the Act, every facility, equipment functionality and capability of the ILEC network as it evolves. 87/ Absent such rules, the ILECs may resist making their advanced network capability available to competitors on a nondiscriminatory, cost-based basis, instead attempting to relegate competitors to older technology and forcing competitors, wherever possible, to duplicate the ILEC network and to collocate equipment as many places as possible thus increasing competitors' costs.

87/ 47 U.S.C. § § 153(29), 251(c)(3), 252(d)(1)

ILECs have already begun to refuse to allow competitors to employ network elements to provide anything but plain old telephone service, and this trend will continue if the Commission does not make it clear that such refusals violate the Act. 88/

The Commission already took a large step in that direction by adopting the Advanced Services Order, in which it ruled that the Act applies equally to existing and advanced ILEC technology, and to circuit and packet switched technology, and regardless of whether voice or data services are being provided. 89/ Even with that Order in place, however, it would speed the deployment of advanced services if the Commission were to adopt additional unbundling rules. Such rules could help to reduce the delay and litigation costs that could result from 50-state implementation of the Act's requirements with respect to advanced technology and services. 90/ Such rules also would provide investment certainty for ILECs, CLECs, and equipment manufacturers.

88/ See, e.g. Bell Atlantic-New York Prefiling Statement, filed on April 6, 1998, in Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions and Draft Filing of Petition for InterLATA Entry, NYPSC Case No. 97-C-0271, at 8-9 (limiting competitors' ability to use combinations of network elements for provision of advanced services).

89/ Advanced Services Order at paras. 11, 35, 40, 49.

90/ Of course, the adoption of national rules does not preclude the states from adopting additional network unbundling requirements

B. Loops and Operations Support Systems

The Commission also should establish rules that will enable CLECs that can justify the installation and collocation of facilities to quickly and efficiently obtain access to loops conditioned for provision of xDSL, as well as ensuring that competitors have access to loops that are equipped to provide high bandwidth capability, such as OC-N and DS-3, as well as dark fiber. Qwest strongly supports the Commission's tentative conclusions with respect to access to operational support system information on local loops, the types of information that must be provided, electronic interfaces, and new information.91 It is essential that the information include access to any ILEC network test capabilities, and that the information be sufficient to permit competitors quickly to make independent judgments about the type and quality of service that can be provided over an individual customer's loop.92 Further, Qwest urges the Commission to require that the ILEC provide access to information about dark fiber capacity (including the generation of the fiber) and access to any network test capability. 93/

---

91 NPRM at paras. 157, 158.

92 Some RBOCs offering ADSL are able to test and determine the quality of a customer's loop in a matter of minutes. Obviously, competitors must have access to the same information and built in ILEC testing capability to make determinations in the same time frames if they are to have any hope of competing.

93/ See discussion above.

C. Loop Spectrum Management

Loop spectrum management may be one of the most technical issues before the Commission in this proceeding, but it will be critical to the competitive provisioning of advanced services. It is also an area ripe for ILEC discrimination in favor of any affiliate. For example, it would not be difficult for the ILEC to arrange to provide itself (or a separate affiliate) favorable treatment in the assignment of choice binder pairs, so that the ILEC alone receives minimal interference, or is able to occupy a sufficient number of key pairs so that no additional advanced services can be provided using that binder without causing harmful interference. Such discrimination would be very difficult to detect. The Commission should adopt rules to prevent this form of discrimination.

Spectrum management issues can also be addressed in large part by employing newer technologies in the network. This is an additional reason why the Commission should include in its rules requirements that the ILEC continue to upgrade its network facilities to support the widespread provision of advanced services.

A "riparian rights" approach, under which new users could not cause interference to existing technology, may make sense, but only if the Commission bounds those grandfather rights within appropriate time frames.94 In general, equipment manufacturers operate on the assumption that such a rule exists, and

94 NPRM at para. 161.

develop new models that can coexist with preceding ones.95 However, given the current speed at which technology is evolving establishing an absolute, permanent right for older technology could severely limit the ability of competitors to deploy advanced services, and should be unnecessary given the much faster depreciation of the network equipment that largely makes up the network today.

D. Uniform Standards For Attachment of Equipment

Qwest supports the Commission's tentative conclusion that there should be uniform national standards for the attachment of electronic equipment at the central office end of a loop by ILECs and new entrants.96 Qwest offers two important caveats, however. First, that the establishment of those standards must not be allowed to drag on or be committed to a working group without clear guidance, time frames, and an expedited dispute resolution mechanism. Second, the standards must be acceptable both to the ILEC community and the CLECs.

The Commission should also stand ready to further the process by any means at its disposal. If generally agreed standards can be quickly implemented, it would certainly speed competition and reduce the cost of equipment by providing greater certainty for manufacturers and eliminating a contentious area of negotiation for interconnection agreements. Certification should be by the

---

95 See "The DSL Source Book: Plain Answers About Digital Subscriber Line Opportunities," Second Edition, at 12-13, 22, at www. paradyne.com/sourcebook_offer/index.html

96 NPRM at para. 163.

manufacturer, and challenges to a certification should be resolved by appeal to an industry body.

E. Defining Network Elements Underlying Advanced Services

To fulfill the goals of the 1996 Act and particularly to ensure the competitive provision of local services to all Americans, the Commission should require ILECs to continue to provide the full range of network functionalities to competing carriers, regardless of the bandwidth provided and regardless of technology used (whether circuit-switched or packet, copper or fiber, etc.) and regardless of whether or where electronics are deployed in the ILEC network. The ILEC must not be allowed to degrade its network, whether through transfer of equipment to an unregulated affiliate or through any other means. Further, as discussed below, the ILECs should be required to continue to upgrade their networks to respond to customer and competitor demand for advanced services capability.

Given the multitude of different network configurations and equipment mixes, both new and old, it is essential for widespread deployment of advanced telecommunications services that competitors be able to obtain access to the network functionality that underlies the provision of advanced, high-bandwidth services by the ILECs, for each customer they seek to serve, without first having to duplicate all or a significant portion of the ILEC network. 97/ In fact, to require

---

97/ As discussed earlier, the effect of the Commission's separate affiliate proposal would undercut all of this because it would require at least some duplication of the competitors to install duplicate facilities, and to collocate such facilities, would violate the clear language of the 1996 Act, the Commission's own determinations in the Local Competition Order, and the ruling of the Eighth Circuit Court of Appeals.98

The Commission should clarify and expand its local loop definition to provide a competitively neutral description that is flexible enough to accommodate changes in transmission speeds and delivery technologies. To do otherwise is to encourage delay as ILECs use technology specific definitions to frustrate competitive access.

The Commission should make it clear that Section 251(c)(3) of the Act gives competitors access to all of the loop, switching, and transport functionalities provided by ILECs, including the electronics used to provide those functionalities. Thus, the network elements available under Section 251(c)(3) should include (for example) HDSL-equipped T-1 or DS-1, FOTS equipped DS-3, Remote Terminal (however equipped) functions, DSLAM-equipped xDSL, fiber OC-N services, as well

---

ILEC or ILEC affiliate's network before a competitor could provide advanced services to *any* consumer.

98 Local Competition Order at para. 328 ("Congress did not intend section 251(c)(3) to be read to contain any requirement that carriers must own or control some of the own local exchange facilities before they can use unbundled elements to provide a telecommunications service."); Iowa Utilities Board v. FCC, 120 F.3d 753, 814 ("Nothing in [section 251(c)(3)] requires a competing carrier to own or control some portion of a telecommunications network before being able to purchase unbundled elements.").